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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Regency Inns Management, Inc.

Serial Nos. 76591235 and 76591237

G. Brian Pingel, Camille L. Urban, and Adam W. Jones of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum P.L.C. for Regency Inns Management, Inc.

Ty Murray, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Seeherman, Hairston and Zervas, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Regency Inns Management, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register, in standard character form, the marks DEADWOOD RESORT, with RESORT disclaimed,¹ and DEADWOOD RESORT AND CONFERENCE CENTER, with RESORT AND CONFERENCE CENTER

¹ Application Serial No. 76591235, filed May 10, 2004, based on Section 1(b) of the Trademark Act (intent-to-use).

disclaimed,² both for hotel and motel services.

Registration has been refused as to both marks pursuant to Section 2(e)(2) of the Trademark Act, 15 U.S.C.

§1052(e)(2), on the ground that applicant's marks are primarily geographically descriptive.

Applicant and the Examining Attorney filed appeal briefs in both appeals.³ Applicant did not request an oral hearing. Because the appeals involve common questions of law and fact, we are deciding both in a single opinion.

Section 2(e)(2) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with the goods or services of an applicant, is primarily geographically descriptive of them. In order to establish that a mark is primarily geographically descriptive, the Examining Attorney must show that (1) the term in the mark sought to be registered is the name of a place known generally to the public, and (2) the public would make a goods/place association, that is, believe that the goods or services for which the mark is sought to be registered

² Application Serial No. 76591237, filed May 10, 2004, based on Section 1(b) of the Trademark Act (intent-to-use).

³ With his brief, the Examining Attorney has requested that the Board take judicial notice of definitions of the words "resort" and "convention center" taken from, respectively, One Look and Wikipedia. Because the entries are from on-line references, we decline to take judicial notice of them. See TBMP §1208.04 (The Board will not take judicial notice of definitions found only in on-line dictionaries and not available in a printed format).

originate in that place. See *In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); *University Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385 (TTAB 1994); and *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704 (TTAB 1988). If the goods or services do in fact emanate from the place named in the mark, the goods/place association can be presumed. *In re Carolina Apparel*, 48 USPQ2d 1542 (TTAB 1998).

With respect to the first part of the test, the Examining Attorney has submitted excerpts taken from various websites that feature the city of Deadwood, South Dakota, and describe it as a historic site. The website for City of Deadwood, www.cityofdeadwood.com, touts the city's place on the National Historic Register, states that it is an historically significant city that attracted such characters as Wild Bill Hickok and Calamity Jane, and claims that it is "the largest historic restoration project in the United States." It also says that contemporary Deadwood has 80-plus gaming halls that have revitalized Deadwood's tourism industry. The website at www.deadwood.net, under the title "Deadwood Information and History," states that tourism is important to the city's

economy. The website at www.deadwood.org states that Deadwood has over 50 places for accommodations, including hotels, motels, bed & breakfasts and cabins, condos and lodges, while the website for Deadwood Gulch Resort & Gaming, www.deadwoodgulch.com, advertises Deadwood Gulch Resort, which includes rooms, a restaurant and a convention center in Deadwood, South Dakota.

The evidence submitted by the Examining Attorney is sufficient to establish that Deadwood is the name of a place generally known to the public. Moreover, evidence that Deadwood is a center of tourism, and that many lodging facilities are located there, is sufficient to establish a goods/place association, that is, that consumers will believe that hotel and motel services emanate from that city.

Applicant does not dispute that Deadwood is a place known to the public, or that consumers will make a goods/place association between hotel and motel services and the city of Deadwood. In fact, applicant has acknowledged the geographic significance of Deadwood: "it is recognized that the mark clearly has a geographic connotation to it." Brief, p. 3.

Applicant's sole argument against a finding that its marks are primarily geographically descriptive is that,

Ser Nos. 76591235 and 76591237

because of the presence of the additional wording in the marks, RESORT in DEADWOOD RESORT, and RESORT AND CONVENTION CENTER in DEADWOOD RESORT AND CONVENTION CENTER, the marks as a whole are not primarily geographically descriptive.

We are not persuaded by this argument. Although the marks do contain the additional wording, these words, RESORT and RESORT AND CONVENTION CENTER, do not in any way affect the geographic significance of DEADWOOD. RESORT and RESORT AND CONVENTION CENTER are descriptive and/or generic terms (and have been disclaimed by applicant); they do not have any source-indicating value. The presence of generic or highly descriptive terms in a mark which also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole. In re JT Tobacconists, supra at 1982. In particular, the words RESORT and RESORT AND CONVENTION CENTER, used in combination with DEADWOOD, do not cause DEADWOOD to have another or additional meaning, such that DEADWOOD or the marks as a whole would have a double entendre.

Decision: The refusals of registration on the ground that DEADWOOD RESORT (Serial No. 76591235) and DEADWOOD RESORT AND CONFERENCE CENTER (Serial No. 76591237) are primarily geographically descriptive are affirmed.